

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
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In Re:

BED BATH & BEYOND INC., *et al.*,

Debtors

Case No.: 23-13350 (VFP)

Chapter: 11

Judge: Hon. Vincent F. Papalia

OBJECTION OF LESSOR/CONTRACT COUNTERPARTY RIVER PARK PROPERTIES II TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Landlord and contract counterparty River Park Properties II (the “Lessor”), by and through its undersigned counsel, hereby objects to the cure amount set forth in the Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (the “Cure Notice”) [Doc. No. 714], and respectfully represents in support thereof as follows:

BACKGROUND

1. On April 23, 2023 (the “Petition Date”), the above-captioned debtors (collectively, the “Debtors”) filed voluntary petitions for reorganization pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).
2. The Debtors and the Lessor are parties to a lease agreement dated as of April 1, 1999 as amended by the First Amendment to Lease dated March 27, 2019 and the Second Amendment to Lease dated September 27, 2020 (the “Lease”) pursuant to which the Debtors

rent property (the “Property”) located in a shopping center in Fresno, California commonly known as River Park Crossing.

3. The Property is a “shopping center” within the meaning of section 365(b)(3) of the Bankruptcy Code.

4. Prior to the Petition Date, the Debtors had become delinquent in their obligations to the Lessor.

5. On June 13, 2023, the Debtors filed the Cure Notice to alert parties such as the Lessor of the amount that the Debtors believe is necessary to cure defaults under various leases to which the Debtors are a party.

DISCUSSION

A. The Debtors Have Understated The Cure Amount

6. The Cure Notice significantly understates the amount necessary for the Debtors to cure all defaults under the Lease. The Cure Notice incorrectly states that \$5,283 would be sufficient to cure all defaults under the Lease.

7. In fact, as shown by the ledger attached hereto as Exhibit A, the amount to become current on monetary obligations under the Lease is \$57,758.68. Further, to the extent that this matter is not resolved before then, the Debtors or any assignee of the Lease will be liable for an additional payment of \$47,436.50 in base rent and \$7,936.97 in estimated common-area maintenance charges on July 1, 2023.

8. To assume the Lease, the Debtors must cure all existing defaults pursuant to § 365(b)(1)(A) of the Bankruptcy Code: “If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee ... cures, or provides adequate assurance that the trustee will promptly cure, such default...” 11 U.S.C. § 365(b)(1)(A). 11. In

disregarding the amounts due under the Lease, as reflected in Exhibit A, the Debtors have understated the amount required to cure defaults under the Lease.

B. Reservation of Rights

9. The Lessor reserves the right to amend and/or supplement this objection and to update the amount necessary to cure. The Lessor further reserves all rights and objections with respect to any sale, assumption or assignment proposed in connection therewith. All objections and reservations asserted herein apply with equal force to any proposed sale, assumption or assignment of the Lease.

CONCLUSION

WHEREFORE, the Lessor requests that the Court enter an order setting the Debtors' obligations to cure amounts due pursuant to the Lease in accordance with this Objection and require that the Debtors and/or any assignee pay such amount in conjunction with any assumption of the Lease.

Dated this the 23rd day of June, 2023.

/s/ Andy Winchell

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